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114

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,198	07/26/2001	Joerg Huber		7812
7590	02/27/2004		EXAMINER	
Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743			GRAHAM, GARY K	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 02/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/890,198	HUBER ET AL.
	Examiner	Art Unit
	Gary K Graham	1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 01 December 2003.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 7-12 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 7-12 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

The disclosure is objected to because of the following informalities: The specification still contains a reference to the claims. Note page 1, line 28 as numbered. The specification should not look to the claims to define the invention. Further, there is no claim 1 pending in the application.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Appel '551.

The patent to Appel discloses the invention as is claimed. Note figure 2 which shows the back (27) having a variable width or thickness along the length of the back as is claimed. Appel employs a connection device (41) for coupling the back at a middle portion thereof to a wiper arm. A wiper strip (37) is connected to the back.

With respect to the limitation in claim 7 that the back has a quasi constant course of hardness along the length of the back, it appears the back of Appel meets the limitation. Hardness of a material is independent or not a function of the width or thickness of the back. The hardness of the back would be a material property and not a dimensional property. Absent some suggestion to the contrary, it appears the back of Appel would have a constant hardness along the length, especially since it is a continuous strip of material. It certainly would have a quasi constant hardness. Note that use of the term quasi allows for some variation from constant.

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Appel '551 in view of Fourie et al '672.

The patent to Appel discloses all of the above recited subject matter with the exception of the back being heat treated.

The patent to Fourie discloses heat treatment of wiper blade support backs. Fourie specifically sets forth that the back is hardened by heat treatment and subsequently cut for length and to provide variable width.

It would have been obvious to one of skill in the art to manufacture the support back of Appel wherein the back is heat treated and then cut to provide the length and the variable width, as clearly suggested by Fourie, to increase the strength and durability of the back. It appears the method suggested by Fourie will provide for a quasi constant course of hardness along the length of the back, particularly if cutting occurs after heat treatment. Since the back has a substantially constant width during heat treatment, it appears heat treatment would render at least a quasi constant harness, absent some teaching to the contrary.

With respect to claims 8-12 and the particular method of the heat treatment, such does not act to define over the Appel/Fourie combination. The particular method of the heat treatment relates to the method of manufacture and does not act to distinguish from the back disclosed by Appel/Fourie. Absent a particular physical characteristic imparted to the back via the particular method, it does not appear the manner of heat treatment claimed will define over the Appel/Fourie combination. Whether or not the back reaches the tempering temperature right before it leaves the tempering zone or not does appear to impart a physical difference not

disclosed by the Appel/Fourie combination. Claims 9-12 all relate to the particular method of manufacturing that does not act to distinguish from the Appel/Fourie combination. For example, in claim 11, whether thermal radiation or induction heating (Fourie) are employed does not appear to affect the support back. Such relates to the method of manufacture.

*Response to Arguments*

Applicant's arguments filed 01 December 2003 have been fully considered but they are not persuasive.

Applicant's statement that material hardness and material strength are pure material qualities is noted and agreed with. While Applicant argues that since Appel does not discuss the strength or hardness of the support back, it cannot anticipate the claim, such is not persuasive. The Examiner agrees with Applicant's statement that Appel does not discuss the hardness of the support back. However, such does not mean that the support back of Appel is without hardness or a quasi constant hardness along the length. As discussed above, hardness is a material property. Thus, the support back of Appel must have a hardness value. The question becomes whether this value is at least quasi constant along the length of the back as is claimed in claim 7. Why would the support back of Appel not have a quasi constant hardness along its length? Note the back shown in figure 2 of Appel. Such is a unitary piece of material. It is reasonable to expect that the hardness of such material is uniform along the length of the back, absent some teaching to the contrary. While the back does have a variable width along its length, it does not

appear such would alter the hardness value of the back. Just as one would expect the density (for example) of the support back material to be quasi constant along the length thereof, absent a teaching that it is not, one would also expect the hardness to also be quasi constant. There is no reason to think that it would not be. If it is heat treatment of a variable width support back that would cause variations in the hardness along the length, note that Appel does not discuss heat treatment of the support back. Thus, such would not be a reason for the back of Appel to not have a quasi constant course of hardness along its length. It is not clear why the hardness of Appel would not be quasi constant. While applicant states that such is manufacturing related, and the Examiner agrees, it is not clear what manufacturing process of Appel would cause such.

Applicant's argument with respect to Fourie are noted but not persuasive. As stated above, width cutting is performed after heat treatment. Again, it is unclear why the support back of Appel formed as suggested by Fourie would not have a quasi constant hardness along the length thereof. While such quasi constant hardness may be achieved in a different manner, such is immaterial to the product claims.

*Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary K Graham  
Primary Examiner  
Art Unit 1744

GKG  
23 February 2004